



## **BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION**

### **Advisory Opinion**

**No. 06-12-012**

A public employee who supervises the handling of consumer complaints against car dealers and whose county office provides advice to consumers about automobile sales has sought our guidance about his serving on the board of directors of a newly-founded nonprofit consumer advocacy organization whose primary mission is to educate consumers seeking to purchase a new automobile.

A public employee must not engage in outside employment without the Commission's approval. The ethics law defines employment as engaging in an activity for compensation. § 19A-4(g). The ethics law defines compensation as "any money or thing or value, regardless of form, including the sale or delivery of tangible or intangible property, that an employer pays or agrees to pay for services rendered." § 19A-4(c). The employee writes that there is "no compensation for serving on the board." Because this is not outside employment, the employee may volunteer for the organization without Commission approval. Likewise, there is not any provision in the ethics law that specifically prohibits the employee from engaging in this activity.

Nevertheless, the Commission is concerned that this volunteer work could conflict with the employee's official duties. According to the letter from the organization inviting the employee to serve on its Board of Directors, the organization's board will be composed of an equal number of consumer representatives and car dealers. The organization hopes to establish a national network of dealers who have agreed to abide by the organization's practices of full disclosure and fair dealing. Also according to the letter of invitation, the organization's "Board members will be responsible for overseeing the operation of the [organization] and [its] staff."

As a member of the organization's Board, the employee would have a duty of loyalty to the organization. That duty of loyalty could interfere with the performance of the employee's official duties if, for example, the organization and the employee's county office were to disseminate consumer information about the same auto sales issue or if a car dealer, against which the employee's office received a consumer complaint, were to claim that it had adhered to the organization's practices. Indeed, if this were outside employment (if the organization compensated the employee), it might be prohibited under § 19A-12(b)(2) which precludes an employee from holding any outside

employment “that would impair the impartiality of and independence of judgment of the public employee.” Moreover, the employee should bear in mind that regardless of whether this activity qualifies as “outside employment,” other provisions of the ethics law still apply. For example, as a *Board member* of the organization, § 19A-11(a)(2)(A) prohibits the employee from participating in any matter, as a public employee, if he knows or reasonably should know that the organization is a party to that matter. Also, under § 19-14(b), the organization cannot use the employee’s title without approval of the Chief Administrative Officer.

None of this is to say that the employee is precluded from providing input to the organization on behalf of the county as part of his official duties. Such input could be provided in a liaison capacity, short of Board membership. It is the employee’s membership on the organization’s Board that is the basis of our concern.

FOR THE COMMISSION:



February 16,  
2007

Date

Richard N. Reback, Chair